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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/063,366   | 04/16/2002  | Thomas L. Toth       | GEMS8081.102        | 4573             |
| 27061  | 7590        | 07/12/2005           | EXAMINER            |                  |
| ZIOLKOWSKI PATENT SOLUTIONS GROUP, SC (GEMS)<br>14135 NORTH CEDARBURG ROAD<br>MEQUON, WI 53097 |             |                      | ROY, BAISAKHI       |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3737                |                  |

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                          |                     |  |
|------------------------------|--------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b>   | <b>Applicant(s)</b> |  |
|                              | 10/063,366               | TOTH, THOMAS L.     |  |
|                              | Examiner<br>Baisakhi Roy | Art Unit<br>3737    |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 May 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 6,7,14,15 and 23 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5,8-13,16-22 and 24-27 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 16 April 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)              |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/15/02, 2/10/05</u> . | 6) <input type="checkbox"/> Other: _____.  |

**DETAILED ACTION**

1. Applicant's election of "species drawn to obtaining CT images of a medical patient" in the reply filed on 5/3/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

***Claim Objections***

2. Claim 10 is objected to because of the following informalities: examiner believes line 2 of claim should read as the "first portion has a higher filtering power difference than a filtering power of the second portion. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5, 8-13, and 16-22 are rejected under 35 U.S.C. 102(b) as being anticipated by McDaniel et al. (4780897). McDaniel et al. disclose a CT system including a rotatable gantry with a an opening for receiving a subject and a movable table or chamber (col. 9 lines 7-35), a set of detectors to generate a set of electrical signals, DAS to receive the signals, and an image reconstructor to

reconstruct an image from the electrical signals (col. 9 lines 36-47 lines 61-68) and method with controlling mechanism for obtaining imaging data of a medical patient (col. 8 lines 38-40) at more than one chromatic energy by positioning or rotating a first filter in the projection path during projection of a first beam of electromagnetic energy to the first voltage potential, positioning or rotating a second filter in the projection path during projection of the second beam of electromagnetic energy to the second voltage potential (col. 9 lines 48-68, col. 10 lines 27-37 lines 50-62, col. 11 lines 48-54). McDaniel et al. teach using a computer readable storage medium for carrying out the set instructions (col. 9 lines 1-5).

5. Claims 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Hampel (4975933). Hampel discloses a filtering apparatus for a radiation emitting imaging system with said filtering apparatus comprising a support plate with connecting mechanism or attachment means for positioning the first and second filter elements (claim 5), where the connection or attachment means are positioned perpendicular to each other (col. 3 lines 7-16), and where the filters are positioned such that the first filter is positioned into the path of the HF electromagnetic energy source when it's energized to a first voltage and then the second filter is positioned into the path of the energy source it's energized to a second voltage (col. 6 lines 54-68, col. 7 lines 1-6).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hampel in view of Perry et al. (6236709). Hampel teaches the use of two filters configured perpendicularly along the connection center of the support plate but does not teach the use of a more than two filter. In the same field of endeavor, Perry et al. disclose a filtering apparatus for CT systems for obtaining multi-energy data, which uses multiple filters (col. 4 lines 45-49). It would have therefore been obvious to one of ordinary skill in the art to use the teaching by Perry et al. to modify the teaching by Hampel for the purpose of obtaining multi-energy outputs.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Baisakhi Roy whose telephone number is 571-272-7139. The examiner can normally be reached on M-F (7:30 a.m. - 4p.m.).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

B.R.

BR

  
BRIAN L. CASLER  
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